

REMARKS

The Pending Claims

Claims 1, 4-10, 12-14, and 17 stand canceled, without prejudice. Claims 3, 11, 15, 16, 18-20 and 47-71 are pending.

The Allowed and Allowable Claims

Claims 18-20 stand allowed and Claims 3, 11, 15 and 16 are now allowable because the objection of depending from a rejected claim has been overcome.

Erroneously Designated Claims Introduced by Amendment Before First Action

An Amendment Before First Action containing new claims was mailed 29 October 2003 and received 3 November 2003. See attached Exhibit "A." These claims should have been but were not acted on, likely because they were misdesignated Claims 21-44. They should have been designated Claims 47-70. This error was inadvertent and has been corrected above. Apologies are extended.

It is courteously requested that Claims 47-70, submitted almost two years ago, be acted upon in a supplemental, non-final Office Action as soon as possible.

Analysis of the Prior Art

Quattrociocchi (U.S. 5,678,379) relates to a bendable metal strap for anchoring the bottom plate of a frame wall to a sub floor of a building. In reference to the drawings, the bendable metal anchor 10 is cut or stamped so that parts extend in three separate planes, one plane containing plate sections 12, 17 and 18, a second plate containing plate section 15, and a third plate containing plate section 16.

1. Plate section 16 is stamped or cut away from plate sections 17 so that plate section 16 is a match for the wedge-shaped opening shown in Figure 1 between plate sections 17 and 18.

2. Two bend lines or lines of weakness 13 and 14 are illustrated in Figure 1 which extend parallel to the base or web 12, not perpendicular thereto.

3. With reference to Figure 2, the distal edges of plate section 17 and 18 are located a predetermined distance from floor corner 32 and, thereafter, nails 24 are driven through apertures 22 in plate sections 17 and 18 (two in each) through the sub floor layer 25 into a floor joist 31.

4. The approach utilized by Quattrociocchi excludes utilization where a wall is superimposed over a concrete foundation.

5. After the nails 24 have been driven, as explained above, the upright plate or flange sections 15 and 16 are still in the position illustrated in Figure 1, with an empty space between these parallel plate sections.

6. Next, bottom wall plate 30 (which ultimately will be in a horizontal position) is lowered in a vertical orientation into the space between the two parallel upright flanges or plate sections 16 and 17, after which nails 28 are driven in opposite directions through the flanges 15 and 16 part way, but not all the way through bottom plate 30 (which typically is a two-inch-by-four-inch or a two-inch-by-six-inch board). See Figure 2. Note that the nails 28 do not extend through more than one aperture and one plate section of the anchor 10, as is true of nails 24. Nails 28 have a length less than the thickness of the bottom wall plate 30. The plate 30 forms the bottom or base of a frame wall 45, shown in horizontal orientation in Figure 2.

7. After the assembly is placed in the position of Figure 2, frame wall 45 with bottom plate 30 integral therewith, is rotated from the position of Figure 2 to the position of Figure 3 bending the anchor 10 along the line of weakness 27 thereby displacing the bottom wall plate 30 along the phantom line shown in Figure 2 so that one corner of the bottom plate 30 becomes disposed immediately above floor corner 32. Thus, the position of Figure 3 is achieved.

8. In the position of Figure 3, the sub floor 25 is horizontal and the frame wall 45 is vertical (perpendicular to the frame wall). The plate 30 is horizontal, as are plate sections 15 and 16 of the anchor 10, with plate section 16 being located directly between plate sections 17 and 18 in a horizontal plate containing all three sections 16, 17 and 18.

In the event of an earthquake, a tornado, a hurricane or the like, the building would collapse either due to a reverse rotation of wall 45 and plate 30 from the position of Figure 3 toward the position of Figure 2, on rotation in the opposite direction causing nails 24 to be pulled out of elements 25 and 31.

Thus, Quattrociocchi is the antithesis of the present invention, allowing, under substantial force, transverse collapse of frame wall 45 and the building of which wall 45 forms a part.

Among the key differences between Quattrociocchi and the present invention are:

- Present strap is flat when initially installed making it very easy to bring a framed wall into position and readily make adjustments to align and connect them. The Quattrociocchi connector has two vertical legs which would require a framed wall to be lifted over the legs and carefully aligned before the bottom plate could be engaged.

- Present connector shape is formed as it permanently bends around the bottom plate sequentially as it is installed. The Quattrociocchi connector is preformed in three different planes and the bottom plate of a stud wall is dropped into the connector.
- The Quattrociocchi device is turned only once as the wall is erected. The present invention hinges several times during the installation process assisting the framer in the alignment and adjustment.
- The Quattrociocchi device cannot be installed in concrete or masonry. The present invention is ideal for wet set in concrete and masonry.
- The Quattrociocchi device is made to engage house wrap. The present invention is not.
- The Quattrociocchi anchor is installed in a parallel orientation to the framing member. The present anchor is installed perpendicular.

The Quattrociocchi device has limited application for wall erection on wood floors only. The present device can be used for numerous applications beyond wall erection such as connection of light framed (steel or wood) walls to various types of floors (wood, concrete, steel), light framed walls to various types walls (including masonry), light framed floors to various types of walls, and light framed walls to various types ceiling and roof construction.

The Quattrociocchi device is nailed to a floor. The present device can be nailed to a floor, but would be used primarily to accommodate a bolted connection which could add a great deal to the overall strength of the completed structure. When properly located, the present device used to connect other portions of the structure will substantially increase the lateral resistance of light framed systems against wind, seismic and flood forces. This is especially true when light framed wall

sheathing is acting as a diaphragm in a shear wall. The Quattrociocchi device would add nothing apparent to the finished structure.

Quattrociocchi cannot be used as part of foundation sill or ledger connection while the present invention is ideal for these applications. The present device additionally, in the illustrated form, provides holes for temporary attachment of device to concrete forms ensuring accurate placement of anchor bolts. The strap nature of the present device would also facilitate placement of wet set anchor bolts to prevent rotation or sinking in concrete or grout as curing takes place. The flat nature of top of the present device facilitates the leveling and finishing of concrete or grout without trying to work around protruding bolt ends. When used as a ledger anchor, the flat nature on the form side and positioning holes of the present device makes it ideal to attach to the inside of concrete forms. Because the present invention wraps around a framing member, it would prevent a ledger or a sill from going into cross-grained tension failure during a seismic event. Quattrociocchi's can accomplish none of these things.

The present device can be used to accommodate stacked foundation sill plates and provide a positive anchor. Stacking plates is used to raise the ceiling height in basements. The commonly used method to stack plates is nailing which is dubious when analyzed for resistance against lateral forces (wind, seismic, flood). The present invention provides a safe and sound method. The Quattrociocchi provide no such protection.

The present strap creates a template for accurately drilling holes for the addition of other connecting devices (primarily bolts) to be installed with the connector. The Quattrociocchi plate does not act as a template.

A truly unique aspect of the present invention is the concept of affixing a strong, light-weight strap to other commonly used, time tested connecting devices. When the strap has predetermined bending points to engage framing members and holes to facilitate the installation of other connectors (nails, bolts, etc,) and when such strap may also be used as a template, new simplified methods of construction can be envisioned. An example described in the application is the use of a strap affixed to a coupling nut which will accommodate a foundation anchor bolt. The concept can be expanded to include a variety common connecting devices in a variety of applications. This straight forward idea can help expedite the physical assembly of buildings, reduce costs by decreasing labor, improve safety during construction, reduce errors and strengthen structures while using accepted engineering practice.

Kaveckis (U.S. 4,976,075) is likewise the antithesis of the present invention, permitting two-way pivoting at the roof level at all times and not per se stabilizing the connected members in an anti-rotation fashion. The pivoting in each of two directions is illustrated broadly in Figures 3 and 4 and specifically in Figures 5 and 6.

The band 16 (Figure 1), which accommodates two-way roof rotation, comprises one piece comprised of seven sections, i.e., sections 16a-16g. The band is connected only at three locations by nails 18, in such a way as to accommodate the two-way pivoting mentioned above. None of the three nails 18 pass through or into anything more than through one section of the band 16 and one member of the two connected plates 12 and 14.

In context, the band 16 forms part of modular sections, which collectively are used to construct houses, with band 16 forming the above-mentioned two-way pivotal function by which, for purposes of shipping or transportation, the roof panel 50 comprising rafter 52 is collapsed into

a horizontal position (Figure 5), which will meet the constraints imposed on road travel. Note in the position of Figure 5, rocker plate 14 is connected to the bevel end 52a of rafter 52 and that the pivot point by which the roof panel 50 is placed in the horizontal position is at corner 12e of plate 12.

Once the modular housing section 20 has arrived at the site where the house is to be constructed, the section 20 is removed from the transport vehicle and placed on location. To create the roof, the roof panel 50 is rotated from the position of Figure 5 to the position of Figure 6, so as to have a slope in respect to the horizontal greater than the angle of the ultimate gable roof create when the assembly is finished. This pivoting action, so far as the band 16 is concerned, is illustrated generically, in Figure 3. Two roof panels 50 are elevated in the same manner as illustrated in Figure 6 and then lowered so as to become contiguous at an apex of the roof. This places the right roof panel 50 in the position illustrated by Figure 7. The only anti-rotation elements, in that position are nails 62, which would not retain the roof in its assembled condition in the event of a hurricane, tornado, or earthquake or some other substantial force. Thus, with nails 62 disabled, the force of the earthquake or the like would rock the roof panels 52 back and forth as permitted by band 16 and as illustrated in Figure 3 and 4, causing the roof if not the entire house to collapse.

Thus, strap 16, which is configured in the shape of a figure 8, accommodates but does prevent transverse rotation of one member to which it is connected in respect to the other member to which it is connected.

Thus, Kaveckis is the antithesis of the present invention, is differently constructed and does not and cannot function as does the present invention as currently claimed to retain the two connected members in a strong, stable relationship.

The Kaveckis device is very different in design and function from the present invention. The description of the "objects of the invention [of Kaveckis] address" entirely different issues than the present invention.

The primary purpose of the Kaveckis device is to allow the limited sliding of members (roof panels) in relation to walls to accommodate temporarily collapsing a roof during the transport of modular housing. In contrast, the claimed device serves to prevent sliding of members (primarily walls and floors) in relation other members both during the framing phase of construction and to add a positive connection in the permanent structure.

The Kaveckis device specifically allows for "hyper extension" after installation beyond the members "final resting position" to permit substantial rocking type movement. Different sections of the present invention bend only once during installation and the connection becomes extremely rigid after installation.

The Kaveckis device is not intended to create a connection for the final construction. Once the modular sections are joined the construction must be completed "by other means" which are "secured by nails or the like" to make stable. The present invention is an integral part of the final construction and is intended to add to the strength of the completed structure.

The Kaveckis device must be constructed of a very flexible band material to allow movement along the length of the strap during and after installation. The strap portion of the present invention is made of an inflexible material which, if desired, may be weakened to bend in one direction only at predetermined locations and the strap must be thereafter rigid to accommodate affixing connection devices, such coupling nuts, to enable connection to other fastening devices, such as bolts.

The 35 U.S.C. § 112 Rejection

The 35 U.S.C. § 112 rejection of Claim 10 is moot, as Claim 10 stands canceled.

The 35 U.S.C. § 102(b) Rejections and Response Thereto

Claims 1, 2, 4, 6 and 9 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kaveckis (U.S. 4,976,075).

Claims 1, 5, 8, 10, 12, 13, 14 and 17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Quattrociocchi (5,678,379).

A review of controlling §102 case law will be helpful as a beginning point.

The earlier reliance was and any further reliance on U.S.C. § 102 would be misplaced as such violated and would continue to violate the strict "every element" [or every step] and "every function" requirements of U.S.C. § 102. Restated, § 102 may be applied to a claim only when "every element" and "every function" of the claim is found in the § 102 reference. For example, Lindemann Maschinenfabrik GMBH v. American Hoist and Derrick Co. et. al., 221 USPQ 481, 485 (CAFC 1984), which emphasizes the "every element" requirement:

Anticipation requires the presence in a single prior art reference of each and every element of the claimed invention arranged as in the claim. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983); SSIH Equip. S.A. v. USITC, 718 F.2d 365, 218 USPQ 678 (Fed. Cir. 1983). In deciding the issue of anticipation, the trier of fact [Examiner] must identify the elements of the claims, determine their meaning in light of the specification and prosecution history, and identify corresponding elements disclosed in the alleged anticipation reference. (Emphasis supplied.)

RCA Corp. v. Applied Digital Data Systems, Inc., 221 USPQ 385, 389 at fn. 5 (Fed. Cir. 1984)

emphasizes the "every function" requirement:

Anticipation is determined by comparison of the reference with the claims. The claims here define the invention in terms of several specific "means plus function" elements. The limitations which must be met by an anticipatory reference

are those set forth in each statement of the function. In re Mott, 557 F.2d 266, 269, 194 USPQ 305, 307 (CCPA 1977). Such a limitation cannot be met by an element in a reference that performs a different function, even though it may be part of a device embodying the same general overall concept. (Emphasis added.)

The Federal Circuit confirmed the forgoing in Diversitech Corp. v. Century Steps, Inc., 7 USPQ2d 1315, 1317 (Fed. Cir. 1988):

For a prior art reference to anticipate in terms of 35 U.S.C. Section 102, every element of the claimed invention must be identically shown in a single reference. See Hybritech, Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 1379, 231 USPQ 81, 90 (Fed. Cir. 1986), cert. denied, 107 S.Ct. 1606 (1987). (Emphasis provided).

Similarly, the Ninth Circuit, in Scott v. Inflatable Systems, Inc., 222 USPQ 460, 461 (9th Cir. 1983), has held:

Anticipation is a technical defense which must meet strict standards. Schroeder v. Owens-Corning Fiberglass Corp., 514 F.2d 901, 904, 185 USPQ 723, 725-26 (9th Cir. 1975). "Unless all of the same elements are found in exactly the same situation and united in the same way to perform the identical function in a single prior art reference, there is no anticipation." Walter v. General Motors Corp., 362 F.2d 56, 68 (9th Cir. 1966). (Emphasis supplied.)

Here, as in Ex parte Murphy and Burford, 217 USPQ 479, 481 (Bd. App. 1982), the Examiner must consider all of the limitations of the claims. In this regard, Ex parte Murphy and Burford holds:

Since all limitations of a claim must be considered in determining the claimed subject matter . . . and it is error to ignore specific limitations distinguishing over the reference. In re Boe, 505 F.2d 1297, 184 USPQ 38 (CCPA 1974).

The Examiner, in making the § 102 rejection, failed to give appropriate weight to functional statements tied to a specific structural means. This is error. As stated in Ex parte Bylund, 217 USPQ 492, 498 (Bd. of App. 1981):

... contrary to the Examiner's assertions, functional language in the claims must be given full weight and may not be disregarded in evaluating the patentability of the subject matter defined employing such functional language. (Emphasis provided.)

The foregoing is wholly consistent with MPEP § 2131:

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegall Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the . . . claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but . . . identity of terminology is not required. *In re Bond*, 15 USPQ2d 1566 (Fed. Cir. 1990).

The present invention unitarily locks the anchor and the two members to which the anchor is attached against relative rotation of any type, while both Kaveckis and Quattrociocchi both do not and cannot.

Any attempt to read the present invention, as presently claimed, fully into any single reference does not comport in any way with the actual elements and functions disclosed in any reference of record. Withdrawal of § 102 as a basis under either Kaveckis or Quattrociocchi for refusing allowance is, accordingly, appropriate and is courteously requested. It is not permissible to reconstruct, rearrange and alter a reference and still comply with the statutory requirements of 35 U.S.C. § 102.

Neither Kaveckis nor Quattrociocchi teaches every element and every function of pending claims and are not and can never be § 102 references. It follows that the pending claims are allowable over Kaveckis and Quattrociocchi under § 102 and such action is courteously invited.

The 35 U.S.C. § 103(a) Rejection and Response Thereto

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable (nonobvious) over Quattrociocchi.

A review of controlling § 103 case law will be helpful.

In addressing the question of whether or not the present invention, as claimed, is obvious or nonobvious under § 103, it is important that several factors be carefully weighed. First, case law requires that the Examiner engage in a "problem" analysis to determine whether or not the prior art addresses the same problem or a different problem than that which confronted the inventor prior to making the present invention. Hindsight reconstruction of the prior art based upon confidential access to the present application is not available to establish obviousness.

The problem confronting the present inventor is identified above. The inventor was able to solve his problem, whereas the prior art did not address and did not solve the problem.

If it is the Examiner's contention that the prior art addresses Applicant's problem and provide Applicant's solution, it is respectfully requested that the Examiner identify the locations in the references relied on where Applicant's problem is mentioned and addressed and the solution is presented.

Since Quattrociocchi is incapable of preventing relative rotation of members connected by a band. Thus, Quattrociocchi did not address nor solve Applicant's problem.

In respect to the applicability of any reference against claims of a pending U.S. patent application, the Examiner's attention is directed to In re Gibbons, 100 USPQ 398, where it is stated:

In considering the question of invention, it is necessary to determine whether or not the art relied upon contains adequate directions for the practice of the invention without resort to the involved application. (Emphasis added.)

The Examiner is courteously requested to find where in the § 103 reference relied upon the requisite "adequate directions" are provided by the prior art relied on sufficient to reach the presently claimed combination. Since the prior art relied upon is neither intended nor able to achieve what the

Applicant has achieved, as set forth in the presently pending claims, it is respectfully submitted that no directions whatever are provided by the reference which would lead to the present invention, as claimed. Accordingly, the reference should be accurately construed and withdrawn.

The pertinent primary inquiries in determining obviousness under § 103 are set forth in the Supreme Court's decision in Graham v. John Deere, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966). The primary considerations set forth therein require (1) determination of the scope and content of the prior art; (2) identification as to the differences between the prior art and the claims at issue; and (3) resolution of the level of ordinary skill in the pertinent art.

Only by reliance on the long prohibited hindsight reconstruction can Quattrociocchi be rewritten to address a problem Quattrociocchi failed to identify and solve. See In re Winslow, 151 USPQ 48 (CCPA 1966) which mandates that the prior art must address and provide the inventor's answer to the particular problem confronting an inventor. Here, the reference relied upon by the Examiner does not identify Applicant's problem, nor does Quattrociocchi propose, expressly or inferentially or by sound reasoning, the claimed solution to the inventor's problem.

In Orthopedic Company, Inc. v. United States, 217 USPQ 193 (Fed. Cir. 1983), the Federal Circuit set forth a useful guide for determining the scope and content of the prior art. Orthopedic, at pages 196, 197, also focuses on the "problem" faced by the inventor:

In determining the relevant art . . . one looks at the nature of the problem confronting the inventor.

* * * *

. . . would it then be nonobvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit [the patent application before the Examiner] as a guide

To support the conclusion that the claimed combination is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed combination or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references. (Emphasis supplied).

There is no convincing line of reasoning available in respect to the reference by which an artisan would, as a matter of obviousness, have arrived at the present claimed invention absent any suggestion, express or implied, in the reference of the solution fashioned by the present inventor, as set forth in the claims.

Here, the indication of nonobviousness is substantial, under the primary considerations of Graham, i.e., the basic irrelevance of the prior art to the claimed combination, failure of others to provide the inventor's solution both before and after the present invention and the fact that others have not foreseen the inventor's solution even though the prior art teachings have been around for some time. A determination of nonobviousness is compelling.

Nonobviousness follows from Panduit Corp. v. Dennison Manufacturing Co., 1 USPQ 2d 1593, 1605 (Fed. Cir. 1987):

Indeed, that the elements noted by the court lay about in the prior art available for years to all skilled workers, without, as the court found, suggesting anything like the claimed inventions, is itself evidence of nonobviousness. (Emphasis provided.)

Where, as here, the prior art is simply incapable of functioning as required by the present claims and achieving what is achieved by the present invention, § 103 rejections cannot be sustained.

Here as in Ex parte Gould, 231 USPQ 943, 946 (Bd. App. 1986):

... the examiner has failed to make out a prima facie case that ... [the prior art] achieved or is capable of achieving ... [what is achieved by the present invention] we are constrained to reverse the rejections based on ... [the prior art]. (Emphasis supplied.)

through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of nonobviousness. . . . (Emphasis added.)

Applying the Federal Circuit's analysis in Orthopedic, it is clear that all of the claims of the present application are allowable under § 103. Quattrociocchi does not expressly teach or suggest the claimed combination. To read into the reference the inventor's present solution, necessarily requires hindsight reliance on Applicant's application, contrary to the instructions of Orthopedic.

Since Quattrociocchi teaches away from the claimed invention and does not address at all Applicant's problem and is incapable of doing so, Quattrociocchi is disqualified as a § 103 reference. The Examiner may not use hindsight access to the present application in an effort to reconstruct Quattrociocchi, where Quattrociocchi in effect instructs those of skill in the art that no vertical adjustment to the horizontal upper surface of a lock lever is required (and no mechanism to do so is disclosed).

The Federal Circuit has also said that "[t]he claimed invention must be considered as a whole, and the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination." (Emphasis provided). Lindemann Maschinenfabrik GmbH v. American Hoist and Derrick, 221 USPQ 481 (Fed. Cir. 1984). The above standard was reiterated in Fromson v. Advance Offset Plate, Inc., 225 USPQ 26 (Fed. Cir. 1985). Clearly, the present combination as set forth in the present claims are not obvious "as a whole" from the references.

The Board of Appeals confirms that hindsight reliance through confidential access to an application being examined, in an attempt to arrive at the claimed invention under 35 U.S.C. § 103, is negated. See Ex parte Clapp, 227 USPQ 972, 973 (Bd. of App. 1985), which states:

For the Examiner to assign attributes to the reference which do not, in fact, exist and to entirely discount the critical language within the claims which is directed to Applicant's combination does not comply with the Graham requirement of [objectively] identifying the differences between the claimed invention and the prior art. Under In re Wood and Eversole, 202 USPQ 171, 174 (CCPA 1979), it was necessary:

... to more closely approximate the reality of the circumstances surrounding the making of an invention. ... (Emphasis added.)

A brief examination of "hindsight" law as handed down by the Federal Circuit superimposed upon the facts of this case will be helpful.

See, for example, Union Carbide Corp. v. American Can Co., 220 USPQ 584, 591 (Fed. Cir. 1984):

... helps us to guard against slipping into hindsight rather than viewing the question as the inventor at the time the patented device was developed." (Emphasis provided.)

The hindsight approach was further criticized in W. L. Gore & Associates, Inc. v. Garlock, Inc., 220 USPQ 303, 312-313 (Fed. Cir. 1983):

To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher. (Emphasis added.)

The Federal Circuit repeated its prohibition against "hindsight" in Uniroyal, Inc. v. Rudkin-Wiley Corp., 5 USPQ 2d 1434, 1438, 1439 (Fed. Cir. 1988), where it was held:

"When prior art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself." Something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination.

* * * *

There is no suggestion in any individual prior art reference of such a combination of location and configuration nor is it suggested by the prior art as a whole. ([I]t is impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention).

* * * *

... the district court ... does not show that there is any teaching or suggestion in any of the references, or in the prior art as a whole, that would lead one with ordinary skill in the art to make the combination.

* * * *

In view of the antithetical principles of operation and the absence of any teaching or suggestion to combine these prior art devices, there is no apparent basis for the district court's conclusion that it would have been obvious to one skilled in the art to make the combination. (Emphasis added; citations omitted.)

The Uniroyal analysis applies here as well.

Clearly, the present invention is not obvious, based upon the analysis of primary considerations mandated by the U.S. Supreme Court in Graham.

The rejection under § 103 has a further malady. It fails to give any weight to the fact that Quattrociocchi teaches away from the simplicity and reliability of the present invention. Here, as in In re Hedges, et al., 228 USPQ 685, 687 (Fed. Cir. 1986):

"The totality of the prior art disclosures leads substantially away from the claimed invention". We agree with ... [Applicant] that the prior art as a whole must be considered. The teachings are to be viewed as they would have been viewed by one of ordinary skill. "It is impermissible within the framework of section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art". (Emphasis added; citations omitted.)

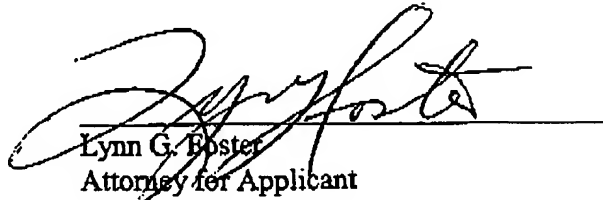
Quattrociocchi should be discarded as irrelevant under § 103. Such action is courteously invited.

CONCLUSION

The § 112 rejection is moot and the § 102 and § 103 rejections cannot stand close scrutiny.

Allowance of all pending claims is proper and is courteously sought.

Respectfully submitted,



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